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State of Maryland

GOVERNOR'S COUNCIL ON HIV PREVENTION AND TREATMENT

December 23, 1991

William Donald Schaefer
Governor

Richard T. Johnson, M.D.
Chairman

William Donald Schaefer, Governor
State House
Annapolis, MD 21401

Dear Governor Schaefer:

At the Council's first meeting on September 19, 1991, you addressed the members of your Council on HIV Prevention and Treatment. You described your hope that the Council would develop a program to increase education, treatment, and hope in the face of the AIDS epidemic. You also told us that you intended to propose legislation requiring AIDS testing of health care workers and patients. And you asked that we discuss your ideas.

Since that meeting, this Council has carefully considered the issue of AIDS testing of health care workers and patients. There is only one documented case in which a health care worker is believed to have transmitted HIV to a patient in the health care setting: that of the Florida dentist who may have infected five patients.

The Council has reviewed the guidelines from the federal Centers for Disease Control, the proposed and final regulations from the federal Occupational Safety and Health Administration, the Practice Protocol developed by the Medical and Chirurgical Faculty of Maryland in response to H.B.194 (now Health General §18-338.1), the recommendations of various professional societies, and our own experiences. Our goal has been to make recommendations to you which, if implemented, would not only reduce the public's fear, but would actually increase the safety of health care workers.

Based on our review of current scientific knowledge about HIV transmission in the health care setting, the consensus of the Council does not believe that mandating HIV testing of either health care workers or patients is a sound public health policy. HIV transmission from health care workers to patients is a remote occurrence; and the risk of occurrence can be decreased through the use of universal precautions. Simply put, universal precautions are techniques, like wearing rubber gloves, that prevent or minimize contact between blood or contaminated fluids of the patient and the bloodstream of a health care worker. These precautions protect both patients and workers.

The Council has developed a list of recommendations for your consideration which we believe would make the health care setting safer for both patients and health care workers. Many of the recommendations would help to prevent the spread of any infectious disease, not just HIV. And the recommendation regarding patients' rights would help patients in all their encounters with the health care system.

I thank you for the trust you have placed in me and the other Council members to explore these extremely sensitive matters.

If I or other Council members can provide you with more information, please feel free to contact me.

Sincerely,

Richard T. Johnson

Richard T. Johnson, M.D.
Chairman

GOVERNOR'S COUNCIL ON HIV PREVENTION AND TREATMENT: RECOMMENDATIONS TO IMPROVE SAFETY IN THE HEALTH CARE SETTING

The acquisition of HIV infection by five patients from one dentist in Florida has resulted in an unprecedented public furor regarding transmission of HIV in the health care setting. Transmission of HIV infection from patient to health care worker had occurred previously, but no direct transmission of HIV from health care worker to patient had been documented, even after studies of thousands of patients who had surgery performed by HIV-positive surgeons. The risk of health care worker to patient transmission as calculated by the CDC and others is negligible compared to the real risks associated with medical care and other activities of daily life.

The Governor's Council on HIV Prevention and Treatment recognizes the fears of the general public regarding HIV and health care and recommends that the Governor and the Legislature take the following steps to alleviate these fears and also significantly improve safety in the health care system.

1. Education and Training of Health Care Professionals:

   The most effective way to ensure protection of health care users is to have the best trained health care professionals possible. All health care workers should be required to undergo continuing education in infectious disease control, including HIV infection, on an annual basis. Newly licensed health care workers and health care workers beginning to practice within the state should be required to have initial education as well as subsequent regular ongoing education. Several states, such as Florida, already require this continuing education as a condition of re-licensure.

2. Implementation of Occupational Safety and Health Administration (OSHA) Regulations:

   OSHA has promulgated final regulations controlling the safety standards in the workplace relevant to HIV and other blood borne infections. Congress has mandated that these regulations be followed by states. Despite concerns about the cost, utility, and lack of scientific evidence of effectiveness, the Council recommends that the Governor and the Legislature adopt these regulations and provide mechanisms for enforcement of these regulations at the state level to complement the national level enforcement as provided in the regulations.

3. Implementation of Protocol, developed by the Medical and Chirurgical Faculty of Maryland (Med/Chi), Pursuant to Maryland Statute:

During the 1991 session of the Maryland Legislature, legislation was passed which required the development of a protocol on management of physicians with HIV infection in health care settings. Med/Chi has developed such a protocol (see attachment). The Council recommends that this protocol be adopted.

4. Professional Licensing Boards and Health Professional Societies:

The professional licensing boards and relevant professional societies should have a role in assuring that the safety standards in health care settings are strictly maintained.

5. Promotion of Patients Rights:

Patients should have a basic set of rights affecting their health care which include:

a. The right to a safe health care setting.
b. The right to have access to competent and well-trained health care professionals.
c. The right to know whether universal precautions are being adhered to, including public notice of those settings that have violated the universal precaution requirement.
d. The right to question any health care provider about the provider's health status as it affects the patient's own care.

Patients must be educated about HIV, safety standards in the health care setting, and their rights as stated above if they are to be active participants in maintaining safety in the health care setting. The Department of Health and Mental Hygiene should develop means to educate consumers about their rights as patients in the health care setting.

6. Reasonable Accommodation for Health Care Workers Who Disclose Their Inability to Provide Care Due to Disability:

The CDC guidelines and the Med/Chi protocol described above provide for the voluntary disclosure by health care workers of their inability to perform their duties that require invasive procedures. Workers who voluntarily disclose this information will be adversely affected by this disclosure. Furthermore, this adverse impact will act as a strong deterrent to voluntary disclosure.

All health care providers who are unable to perform their duties due to the onset of a disability should be informed of their rights to reasonable accommodation under existing state and federal disability (non–discrimination) statutes. Health care settings should develop and publish policies that delineate how accommodation will be made for employees who are unable or prohibited from performing their employment.

Health care facilities should promulgate policies that clearly delineate the process for handling such voluntary disclosures, including the reasonable accommodations that will be offered to such an employee. These accommodations should include the receipt of benefits including disability and early retirement, alternate work assignments, confidentiality in the workplace and others.

Practice Protocol for Physicians with the Human Immunodeficiency Virus (HIV)

(Adopted by the Med Chi House of Delegates 9/14/91)

The Medical and Chirurgical Faculty of Maryland in consultation with the Centers for Disease Control (CDC), the Maryland Hospital Association, and the Department of Health and Mental Hygiene shall develop a practice protocol for physicians who are infected with HIV. (H.B. 124)

The Maryland Practice Protocol for Physicians with HIV complies with the Centers for Disease Control (CDC) "Recommendations for Preventing Transmission of Human Immunodeficiency Virus...to Patients During Exposure-Prone Invasive Procedures," as published in the Morbidity and Mortality Weekly Report (MMWR) on July 12, 1991. This includes adherence to universal precautions and infection control practices. This protocol is intended to be applied to physicians only, although it may be applicable to other health care groups.

The Medical and Chirurgical Faculty of Maryland (Med Chi) requests the Maryland General Assembly to consider the following facts when developing any legislation relating to physicians infected with HIV:

1. Transmission of HIV from physician to patient has never been documented.
2. The CDC has calculated the risk of any possible future transmission as inconsequential in comparison to real risks of preventable death that the public accepts without question (e.g. smoking, failure to use seat belts, easy access to guns, etc.).

3. The transmission of HIV from patients to physicians has been documented.

Despite these facts, the public is concerned with the negligible risk of transmission of HIV from physician to patient. To address this concern, Med Chi offers the following practice protocol for physicians with HIV.

• Expert Review Panel

Physicians infected with HIV who perform exposure-prone procedures must be evaluated to determine whether they should modify their professional activities to reduce the risk of transmission of HIV to patients. Physicians who test positive for HIV and wish to continue performing exposure-prone procedures shall seek counsel from an expert review panel or refrain from performing those procedures. The panel is designed to fulfill the requirements of the Maryland General Assembly's legislation.

Every physician case will be referred to a review panel appointed by Med Chi which consists of two components: a core group and two additional members. The core group is comprised of:

- an physician specialist in infectious disease knowledgeable in HIV issues appointed by Med Chi who shall be chair of the review panel;
- a physician representing the state health department appointed by the Secretary to the Department of Health and Mental Hygiene; and
- a physician representative from the Maryland Hospital Association.

These representatives will be assigned to the panel by Med Chi for a designated period of three years to provide continuity in the panel's decisions and may be reappointed. The two other panel members selected by the core group will be unique to each case and will consist of:

- the infected physician's personal physician or other physician designated by the infected physician ad;
- a physician with expertise in the same specialty as the infected physician.

The panel shall evaluate the potential risk of transmission of HIV from the infected physician to patients and, where appropriate, limit the infected physician from performing certain exposure-prone procedures or require the infected physician to obtain informed consent from patients prior to performing certain exposure-prone procedures.

The panel is to be staffed by Med Chi and its records are to be kept at Med Chi. The records of the panel are confidential, not-discoverable, and cannot be used in any civil action. Information regarding a case can be revealed to the Board of Physician Quality Assurance (BPQA) if the physician does not abide by the stipulations of the advocacy contract.

• Advocacy Contract

Upon completion of the evaluation, the infected physician will sign an advocacy contract stipulating what is expected of him or her. Contracts will be tailored to the individual needs of the physician and will include a provision for quarterly monitoring of the infected physician by members of the expert review panel. During the quarterly monitoring, the panel will review, revise and/or update the infected physician's advocacy contract based on new information.

• Monitoring

Inside hospitals, each infected physician with procedure limitations imposed by the panel will be monitored confidentially by the review panel through a Health Services Cost Review Commission (HSCRC) database that creates an abstract for each hospital admission. In this database, physicians are assigned a unique identification number which can only be linked to the identity of the physician by Med Chi. This monitoring system will assure that the confidentiality of the infected physician is maintained.

Infected physicians who perform invasive procedures outside hospitals (e.g. surgicenters) will be subject to quarterly reviews of their patients' medical records by a member of the review panel.

• Physician Compliance

HIV-infected physicians who knowingly perform exposure-prone procedures and do not voluntarily restrict themselves or seek advice from the panel will be subject to action by the Board of Physician Quality Assurance (BPQA). HIV infected physicians who violate the terms of their advocacy contract will also be subject to action by the BPQA. The review panel shall be required to report violations of advocacy contracts to the BPQA.

Provisions for professional and/or financial/insurance assistance must be made to help physicians who modify their practice patterns as a result of their HIV status.

• Liability

An effective review of the infected physician can only take place if the members of the expert review panel can feel free to express their opinions without fear of litigation. Immunizing panel members from suit must be an integral part of any legislation concerning this protocol.

• Confidentiality

It is mandatory that great care be provided to ensure the confidentiality of any physician who voluntarily seeks the advice of the panel. Knowledge of the physician's HIV status shall be

restricted to the members of the expert panel unless the physician does not abide by the advocacy contract in which case the physician will be reported to the BPQA.

• **Testing**

Physicians who perform exposure-prone procedures have a professional responsibility to know their own HIV status. Physicians who perform exposure-prone procedures or who have reasonable cause to believe they may be infected should determine their serostatus, and if positive, voluntarily refrain from performing exposure-prone procedures or seek the advice of the expert review panel. Mandatory testing of physicians or health care workers is not recommended.

• **Definitions**

HIV Positive Physician - A physician who has a positive ELISA test with a confirmatory Western Blot.

Exposure-Prone Invasive Procedures - The present CDC draft guidelines attempt to provide a clear distinction between invasive procedures from which there is little or no risk of transmission of HIV and those exposure-prone invasive procedures which may pose a significant risk of transmission of HIV. Exposure-prone invasive procedures are defined as those that present a recognized risk where the physician's blood is likely

to contact the patient's body cavities, subcutaneous tissues, and/or mucous membranes. Contact can occur directly, as a result of overt bleeding by the physician following a percutaneous injury from a needle or other sharp instrument, or through injuries caused by bone, bone fragments, or implanted and fixed surgical devices. Contact can also occur indirectly, through contamination of instruments or materials used during the procedure.

Exposure-prone procedures include those that involve the digital palpation of a needle tip in a body cavity. Other potentially high-risk procedures are those that require the simultaneous presence of the physician's fingers and a sharp instrument or needle in a poorly visualized or highly confined anatomic site.

The Med Chi Committee on AIDS is currently surveying its specialty societies and will attach to this protocol a listing of procedures it considers to be high-risk for transmission of HIV.